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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

ALAMEDA COUNTY MALE PRISONERS
And Former Prisoners, DANIEL GONZALEZ,
et al. on behalf of themselves and others similarly
situated, as a Class, and Subclass
PLAINTIFFS,

vs.

ALAMEDA COUNTY SHERIFF'S
OFFICE, et al

DEFENDANTS.

No. 3:19-cv-07423 JSC

**DECLARATION OF DAVID MISCH
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION
REQUESTING SAFE AND
SANITARY FOOD**

DATE: Dec. 31, 2020
TIME: 9:30 a.m.
COURTROOM: E, 15th Floor

Hon. Jacqueline S. Corley, Presiding

I, DAVID MISCH, declare:

1. I am currently an inmate in Santa Rita Jail (SRJ), the County Jail for Alameda County, housed in Housing Unit (HU) 2, Pod B.
2. Every day, I write down on a log the food I receive. I compare the food I actually receive with the menus that Aramark issued. I asked the jail multiple times and even submitted

1 grievances asking if they could provide me with a copy of my religious menu (I am currently
2 receiving the Kosher diet here). They have constantly denied this request. I have only been able
3 to compare the food I receive to the listed menu items after receiving these Aramark menus from
4 my attorney. Attached as Exhibit A is a copy of the Aramark kosher diet menu.

5 3. After analyzing the amount of food I actually receive compared to the menu amounts, I
6 have found that it is rare for me to receive what the printed menu says is supposed to be in the
7 Kosher diet. It is rare for me to receive all the foods that the menu says I should be receiving and
8 that these foods are in the stated quantities. For example, I'd say around a quarter to a third of the
9 time, my breakfasts and dinners (the two meals that come on trays) have tray compartments that
10 are only half or two thirds full (sometimes even less). Even though the meals are supposed to
11 consist of two trays, one hot and one cold, there have been days where the kitchen fits everything
12 on one tray, and I only receive one tray. When they do this for the breakfasts, they usually put
13 the dry cereal, which is supposed to fill up the 1.5 cup large section, into the small sections (each
14 around $\frac{3}{4}$ cup), and then the kitchen only fills up the small sections around $\frac{1}{3}$ of the way with
15 dry cereal. So, instead of receiving 1.5 cups of dry cereal, I end up with only 1 cups of dry
16 cereal for breakfast.

17 4. For breakfast, I usually receive dry cereal (which again, is often short of the 1.5 cup the
18 menu says I am entitled to), peanut butter or one hard-boiled egg, two pieces of bread, and jelly.
19 I also usually receive two small milk cartons (one pint total). Peanut butter is part of my
20 breakfast approximately three times a week. And around half the time, my breakfast tray is
21 missing one (or sometimes both) of the peanut butter packets that the menu says I am entitled to.
22 Each peanut butter packet is one ounce and contains approximately 7 grams of protein, so out of
23 7 days a week, I usually only get half my protein for breakfast a quarter of the time. These small
24 packets of peanut butter (and on other days, the small hard-boiled egg) is my only source of
25 protein for breakfast. This lack of protein in my breakfast (and general shortage of food) has a
26 direct and significant impact on my health and energy level, and leaves me still feeling hungry
27 even after eating everything on my tray.
28

1 5. I always tell a deputy when my tray is missing a peanut butter, and sometimes the deputy
2 will try to track down an extra packet for me. However, the deputy on duty will sometimes say
3 things like, “We don’t have any control over what Aramark puts on the trays.” Or, the deputy
4 will say, “Well, it’s free food” and make no effort to track down enough food for me to receive a
5 full breakfast. It is usually the overnight deputies who are on duty until seven in the morning that
6 give me a “smart” answer and/or don’t help me complete my meal.

7 6. As evidence of more breakfast shortages, I recall a period of over a week in August where
8 we only received a half a pint of milk every day for breakfast instead of the full pint that the
9 menu says we are entitled to. This is detailed in my food logs. I also never receive fruit in my
10 breakfast, despite the menu saying we are entitled to a piece of fruit or a half cup equivalent for
11 every breakfast. A handful of times, I have received an extra piece of fruit in my lunch to make
12 up for the missing breakfast fruit, but this rarely happens.

13 7. As for shortages in my lunch, in 100% of my lunches over the time period I logged
14 (between June 17, 2020 and October 24, 2020), I received four small cookies instead of the five
15 that the menu promises. For me, I need all the calories I can get, so missing seven cookies a week
16 that I should be getting makes a big difference.

17 8. Shortages in my dinners are also constant. As I mentioned, tray compartments are often not
18 full. Just the other night, I was able to pour all my beans (which are supposed to be 1.5 cups in
19 volume and take up the whole large tray compartment) into the small compartment of my tray
20 (the $\frac{3}{4}$ cup compartment) – all the beans easily all fit into that small compartment. Therefore, I
21 only received half of the beans I was entitled to that night, confirmed by the tray’s own
22 measurement system. To make matters worse, the dinners usually end up being very overcooked
23 so that the beans become a mush. The rice we sometimes get instead of the beans is so dry and
24 hardened to the point where I often can’t even chew it. Two to three times a week, I receive a tray
25 with the plastic seal slightly off or opened. When I receive trays where the plastic seal has been
26 damaged, the food overcooks and hardens even more than usual.

27 9. The vegetable portion for dinner is supposed to be one cup, but the amount that comes on
28 the tray is often less. And the vegetables these days are usually just shredded cabbage in water. I

1 don't know why the cabbage is in water. If it's supposed to be dressing, it has no flavor. And
2 when the vegetables are spoiled and sour or brown, I have to throw it all out. I would estimate
3 that the coleslaw or lettuce are spoiled and/or rotten around 20% of the time. I have noticed that
4 while the hot trays are warming in the ovens, staff will often take the cold trays out of the fridge
5 and lay them out on the tables, to be left there for two to three hours before being served. I have
6 noticed that when the cold trays are sitting out for several hours, the vegetables are spoilt and are
7 then inedible.

8 10. On October 16th, I started keeping a log of how long the dinner cold trays were left out at
9 room temperature. Nine out of nine times I tracked this (100% of the time), the cold trays were
10 left out for over two hours. On October 17th, I noted that the cold trays were left out from
11 1:30pm until dinner at 6:15pm (almost five hours). And on October 23rd, the cold trays were left
12 out from 1:30pm until dinner at 5:15pm (almost four hours). Considering that the fruit in my
13 breakfast is always missing and the vegetable portion of my dinner is rotten and inedible once a
14 week at the very least, I believe I am experiencing a serious deficiency of fruits and vegetables in
15 this jail.

16 11. The "meat" element in my dinner is almost always TVP (textured vegetable protein), which
17 tastes like cut up pieces of a kitchen sponge. Aside from the TVP being incredibly unappetizing,
18 the TVP is another dinner element at least once a week (often twice or three times), contains less
19 than the $\frac{3}{4}$ that the menu promises.

20 12. I don't have the money for commissary, so I always make an effort to try and eat what I can
21 of the jail meals. For example, the sauce that sometimes comes with the TVP is not only very
22 unappetizing, but is usually very dried out. When this sauce is red, I am usually able to make it
23 more fluid by diluting it with four or five ounces of water. However, the white sauce cooks so
24 strangely that it leaves about a quarter to half an inch of a strange gelatin substance at the bottom
25 of the tray section. Even when I try to dilute this white sauce with water to make it into a more
26 uniform consistency, it doesn't work. I can even pick up the layer of gelatin with my fork and it
27 all stays together, like a big piece of rubber. This rubber layer is hard to chew, and so I can't eat
28

1 it. But it also fills up another quarter to half inch of the main food section, which creates an even
2 bigger portion shortage in my dinners.

3 13. When we used to receive the hard plastic reusable food trays, most of the time, if you
4 looked, you would see food dried on the bottom and sides of the trays from the night before. If
5 you didn't look, you might bite into something very strange, like something hard or acidic. The
6 dirty trays are disgusting, but they also result in the food being inedible. There apparently is no
7 rinsing or drying of the trays. These trays have arrived in which the dry cereal is soggy, the bread
8 is soggy, the Kool Aid packet is wet, making all of those items inedible. The corn tortillas often
9 taste like soap, the flavor of unrinsed, soapy, wet trays.

10 14. Now though, my unit mostly receives disposable paper trays. On the one hand, the
11 disposable trays are cleaner because they don't have leftover food bits from the previous meals.
12 On the other hand, I have measured the height and diameter of these paper trays compared to the
13 plastic ones, and the paper trays have significantly smaller tray cups and hold less than the plastic
14 trays, so I get less food. Attached as Exhibit B is a true and correct drawing I made of the tray to
15 show the Court what they look like. These drawings are as close to scale as I could make them. I
16 created them by tracing the bottoms of each type of food tray and then inserting the
17 measurements I took of each compartment.

18 15. I arrived at this jail weighing 225 pounds in March 2018. I then gained weight after a few
19 months in the jail, and I remember the psychiatrist documenting my weight at 248 pounds at one
20 point. Around January or February of 2020, when Aramark started changing the menu, reducing
21 the food portions more, and leaving out more of the meal elements, and I started losing weight. I
22 have lost almost 70 pounds between January and August 2020 (eight months). In August 2020, I
23 weighed 180 pounds, which I haven't weighed since I was 16 years old. I am 6'2", and even
24 when I was running 1000 miles a year as an adult (I was in a club that did this every year), I
25 weighed 205 pounds minimum. So in August, I went to see the jail doctor, and they put me on
26 Ensure to gain some weight back. They gave me the Ensure carton to drink once a day, but I
27 wasn't gaining any weight, so they bumped me up to Ensure twice a day. At that point, I started
28 gaining some weight back and ended up at 190 pounds. I was hoping to continue this regimen to

1 get back to over 200 pounds, but then the doctors took me off Ensure, telling me I was at a
2 healthy enough weight. I certainly didn't feel healthy, but I wasn't allowed to continue with the
3 regimen. Now though, I can feel myself losing weight again.

4 10. I have gotten food poisoning twice at SRJ. The first time, I thought the tuna in my lunch
5 tasted very strange. Shortly after that, I felt ill and nauseous, and I started to profusely vomit
6 shortly after. The second incident occurred on September 19, 2020 and is detailed in my food log.
7 On that day, I thought the egg at breakfast tasted strange. Sure enough, my stomach started
8 gurgling shortly after and I started to feel ill and then started repeatedly vomiting. I was throwing
9 up from 8pm until 11pm and couldn't even keep water down until the next morning. The nurse
10 gave me Gatorade to rehydrate after that incident.

11 11. I have very little energy in this jail due to the lack of nutrition I receive. I am always still
12 hungry after meals. There's nothing worse than starting the day hungry. See, if you start the day
13 being hungry even after eating, the whole day you're hungry, trying to catch up and being pissed
14 off. Not just the constant shortages, but also the frequent oversights (like getting mustard packets
15 instead of jelly with the peanut butter in my lunch or the jail not providing my religious diet
16 lunches when we go to court) are exhausting and drain my energy even more when I have to fight
17 to get the meals I am entitled to. And usually, no one will listen. The food has definitely gotten
18 worse and worse here as time has gone on. And it's much worse than the food I received in
19 prison. I can barely ever afford to buy the very expensive commissary food items here at Santa
20 Rita. I am only able to go around once every three months to grab a few things from commissary.
21 I would say only 35-40% of prisoners have funds to get commissary food regularly, so most folks
22 go hungry.

23
24 I declare under penalty of perjury of the laws of the State of California and the United
25 States that the foregoing is true and correct to the best of my knowledge and belief. Because of the
26 coronavirus, and my confinement, I was not able to sign this declaration in person. This
27 declaration was read to me in its entirety in final form on the phone by JENNA SWARTZ on
28

1 November 13, 2020. I understand and verify its contents in full, and authorize Jenna Swartz to
2 sign it on my behalf.

3 Executed on November 13, 2020 in Oakland, California.

4
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6 
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8 _____
9 Signed by Jenna Swartz
10 Paralegal, Law Office of Yolanda Huang
11 on behalf of David Misch
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EXHIBIT A

SANTA RITA JAIL KOSHER MENU

Proposed 8/16
Revised: 10/17/5/18,6/12/18,7/18,
2/19

**ALMEDA COUNTY
CALIFORNIA
RELIGIOUS MEALS MENU**
Weekly Average 2600 Calories Per Day



Week: 1
MONDAY
Meal Name: Breakfast

	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Fruit (1@ or 1/2 cup equivalent)*	1 portion	1 portion	1 portion	1 portion	1 portion	1 portion
Kosher Corn Flakes	1 1/2 cup	Kosher Toasted Oats	Kosher Corn Flakes	Kosher Corn Flakes	Kosher Corn Flakes	Kosher Toasted Oats
Kosher Bread or Roll	2 each	Kosher Bread or Roll	Kosher Bread or Roll	Kosher Bread or Roll	Kosher Bread or Roll	Kosher Bread or Roll
1% Milk (Half Pint)	2 each	1% Milk (Half Pint)	1% Milk (Half Pint)	1% Milk (Half Pint)	1% Milk (Half Pint)	1% Milk (Half Pint)
Peanut Butter	2 each	Peanut Butter	Hard Cooked Egg	Garden Burger	Peanut Butter	Hard Cooked Egg
Jelly, pc	2 packet	Jelly, pc	Jelly, pc	Taco Sauce	Jelly, pc	Jelly, pc
Sugar	2 packet	Sugar	Sugar	Sugar	Sugar	Sugar

Meal Name: Lunch

Finned Tuna	4 ozw	Hard Cooked Egg	Peanut Butter	Finned Tuna	Peanut Butter	Hard Cooked Egg
Mayo Dressing	2 packet	Mayo Dressing	Jelly, pc	Mayo Dressing	Jelly, pc	Mayo Dressing
Kosher Bread or Roll	4 each	Kosher Bread or Roll	Kosher Bread or Roll	Kosher Bread or Roll	Kosher Bread or Roll	Kosher Bread or Roll
Carrot Sticks or Coins	3 ozw	Carrot Sticks or Coins	Carrot Sticks or Coins	Carrot Sticks or Coins	Carrot Sticks or Coins	Carrot Sticks or Coins
Orange	1 each	Orange	Orange	Orange	Orange	Orange
Duplex Sandwich Cookies	5 each	Duplex Sandwich Cookies	Duplex Sandwich Cookies	Duplex Sandwich Cookies	Duplex Sandwich Cookies	Duplex Sandwich Cookies
Fruit Drink w/ B12, C, D, E & Calcium	1 packet	Fruit Drink w/ B12, C, D, E & Calcium	Fruit Drink w/ B12, C, D, E & Calcium	Fruit Drink w/ B12, C, D, E & Calcium	Fruit Drink w/ B12, C, D, E & Calcium	Fruit Drink w/ B12, C, D, E & Calcium

Meal Name: Dinner

Creamy Chicken Dinner	3/4 cup	Beef Stroganoff	Taco Meat	Sweet & Sour Chicken	Pulled BBQ Chicken	Turkey A La King
Northern Beans	1 1/2 cup	Kosher Rice	Northern Beans	Kosher Rice	Kosher Bread or Roll	Kosher Roll
Garden Salad	1 cup	Kosher Colelaw Vinaigrette	Shredded Lettuce	Garden Salad	Northern Beans	Garden Salad
Scratch Italian Salad Dressing	1/2 fl oz	Kosher Bread or Roll	Flour Tortilla (6")	Scratch Italian Salad Dressing	Kosher Colelaw Vinaigrette	Scratch Italian Salad Dressing
Kosher Bread or Roll	2 each	Margarine, pc	Fruit Drink w/ Vitamin C	Kosher Bread or Roll	Fruit Drink w/ Vitamin C	Kosher Bread or Roll
Margarine, pc	1 each	Fruit Drink w/ Vitamin C		Margarine, pc	Fruit Drink w/ Vitamin C	Margarine, pc
Fruit Drink w/ Vitamin C	1 packet		Fruit Drink w/ Vitamin C	Fruit Drink w/ Vitamin C	Fruit Drink w/ Vitamin C	Fruit Drink w/ Vitamin C

This menu contains only food items that are kosher and halal. Side dishes are volume measurements. All dinner entrees are made with Texturized Vegetable Protein (TVP) unless otherwise indicated. All starches, vegetables, and cooked cereal are prepared with margarine unless indicated as LF (Low Fat). No pork is used.

NUTRITION STATEMENT: This menu meets the nutritional guidelines of the American Correctional Association which are based upon the current DRI's for males and females 19 to 50 years as established by the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences. Adequate levels of protein, vitamin A, vitamin C, calcium, and iron are included.

General Guidelines: Follow all kosher preparation instructions in recipes for Entrees, Starches, and Salads. Utensils used for scooping, cooking and serving must be dedicated for kosher food use ONLY and stored in a special area. No meat is served. Serve meal on disposable or designated kosher trays with disposable or kosher only tableware.

*Fresh Fruit (1 each) or Canned Fruit (1/2 cup) allowed (reference chef's choice handout for approved recipes)

FLM QUARTERLY MENU REVIEW (initials/date) Q1 _____ Q2 _____ Q3 _____ Q4 _____
In accordance with ACA Standard (ref. 4-ALDF-4A-07) (MANDATORY) Menu evaluations are conducted at least quarterly by food service supervisory staff to verify adherence to the established daily servings.

Reviewed: 2/19

Aramark Dietitian's Signature:

Client's Signature:

Date:

FLM Signature:

Date:



**ALMEDA COUNTY
CALIFORNIA
RELIGIOUS MEALS MENU**
Weekly Average 2600 Calories Per Day

Proposed 8/16
Revised: 10/17/5/18,6/12/18,7/18,
2/19

Week: 2

MONDAY

Meal Name: Breakfast

	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Fruit (1 @ or 1/2 cup equivalent)*	1 portion	1 portion	1 portion	1 portion	1 portion	1 portion
Kosher Corn Flakes	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup
Kosher Bread or Roll	2 each	2 each	2 each	2 each	2 each	2 each
1% Milk (Half Pint)	2 each	2 each	2 each	2 each	2 each	2 each
Peanut Butter	3 ozw	2 each	1 each	1 packet	2 each	1 each
Jelly, pc	2 packet	1 packet	2 packet	1 packet	1 packet	2 packet
Sugar	2 packet	2 packet	2 packet	2 packet	2 packet	2 packet

Meal Name: Lunch

Rinsed Tuna	4 ozw	3 each	1 each	3 each	4 ozw	1 each
Mayo Dressing	2 packet	2 packet	2 packet	2 packet	2 packet	2 packet
Kosher Bread or Roll	4 each	4 each	4 each	4 each	4 each	4 each
Carrot Sticks or Corns	3 ozw	3 ozw	3 ozw	3 ozw	3 ozw	3 ozw
Orange	1 each	1 each	1 each	1 each	1 each	1 each
Duplex Sandwich Cookies	5 each	5 each	5 each	5 each	5 each	5 each
Fruit Drink w/ B12, C, D, E & Calcium	1 packet	1 packet	1 packet	1 packet	1 packet	1 packet

Meal Name: Dinner

Chili	3/4 cup	3/4 cup	3/4 cup	3/4 cup	3/4 cup	3/4 cup
Northern Beans	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup
Kosher Colcassau Vinaigrette	1 cup	1 cup	1 cup	1 cup	1 cup	1 cup
Kosher Bread or Roll	2 each	2 each	2 each	2 each	2 each	2 each
Margarine, pc	1 each	1 each	1 each	1 each	1 each	1 each
Fruit Drink w/ Vitamin C	1 packet	1 packet	1 packet	1 packet	1 packet	1 packet

This menu contains only food items that are kosher and halal. Side dishes are volume measurements. All dinner entrees are made with Texturized Vegetable Protein (TVP) unless otherwise indicated. All starches, vegetables, and cooked cereal are prepared with margarine unless indicated as LF (Low Fat). No pork is used.

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*Fresh Fruit (1 each) or Canned Fruit (1/2 cup) allowed (reference chef's choice handout for approved recipes)

FLM QUARTERLY MENU REVIEW (initial/date) 01 _____ 02 _____ 03 _____ 04 _____
In accordance with ACA Standard (ref. 4-ALDF-4A-07) (MANDATORY) Menu evaluations are conducted at least quarterly by food service supervisory staff to verify adherence to the established daily servings.

Reviewed: 2/19

Aramark Dietitian's Signature:

Client's Signature:

Date:

FLM Signature:

Date:



**ALAMEDA COUNTY
CALIFORNIA
RELIGIOUS MEALS MENU**
Weekly Average 2600 Calories Per Day

Proposed 8/16
Revised: 10/17, 5/18, 6/12/18, 7/18,
2/19

Week: 3

Meal Name: Breakfast

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Fruit (1 @ or 1/2 cup equivalent)*	1 portion	1 portion	1 portion	1 portion	1 portion	1 portion	1 portion
Kosher Corn Flakes	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup
Kosher Toasted Oats	2 each	2 each	2 each	2 each	2 each	2 each	2 each
Kosher Bread or Roll	2 each	2 each	2 each	2 each	2 each	2 each	2 each
1% Milk (Half Pint)	2 each	2 each	2 each	2 each	2 each	2 each	2 each
1% Milk (Half Pint)	2 each	2 each	2 each	2 each	2 each	2 each	2 each
Peanut Butter	2 each	2 each	2 each	2 each	2 each	2 each	2 each
Jelly, pc	2 each	2 each	2 each	2 each	2 each	2 each	2 each
Sugar	2 packet	2 packet	2 packet	2 packet	2 packet	2 packet	2 packet

Meal Name: Lunch

Rinsed Tuna	3 each	3 each	3 each	3 each	3 each	3 each	3 each
Mayo Dressing	2 packet	2 packet	2 packet	2 packet	2 packet	2 packet	2 packet
Kosher Bread or Roll	4 each	4 each	4 each	4 each	4 each	4 each	4 each
Carrot Sticks or Corns	3 ozw	3 ozw	3 ozw	3 ozw	3 ozw	3 ozw	3 ozw
Orange	1 each	1 each	1 each	1 each	1 each	1 each	1 each
Duplex Sandwich Cookies	5 each	5 each	5 each	5 each	5 each	5 each	5 each
Fruit Drink w/ B12, C, D, E & Calcium	1 packet	1 packet	1 packet	1 packet	1 packet	1 packet	1 packet

Meal Name: Dinner

Oven Roasted Chicken	3/4 cup	3/4 cup	3/4 cup	3/4 cup	3/4 cup	3/4 cup	3/4 cup
Northern Beans	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup	1 1/2 cup
Garden Salad	1 cup	1 cup	1 cup	1 cup	1 cup	1 cup	1 cup
Scratch Italian Salad Dressing	1/2 fl oz	1/2 fl oz	1/2 fl oz	1/2 fl oz	1/2 fl oz	1/2 fl oz	1/2 fl oz
Kosher Bread or Roll	2 each	2 each	2 each	2 each	2 each	2 each	2 each
Margarine, pc	1 each	1 each	1 each	1 each	1 each	1 each	1 each
Fruit Drink w/ Vitamin C	1 packet	1 packet	1 packet	1 packet	1 packet	1 packet	1 packet

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FLM QUARTERLY MENU REVIEW (initials) 01

02

03

04

In accordance with ACA Standard (ref. 4-ALDF-4A-07) (MANDATORY) Menu evaluations are conducted at least quarterly by food service supervisory staff to verify adherence to the established daily servings.

Reviewed: 2/19

[Signature]
ARAMARK

Client's Signature:

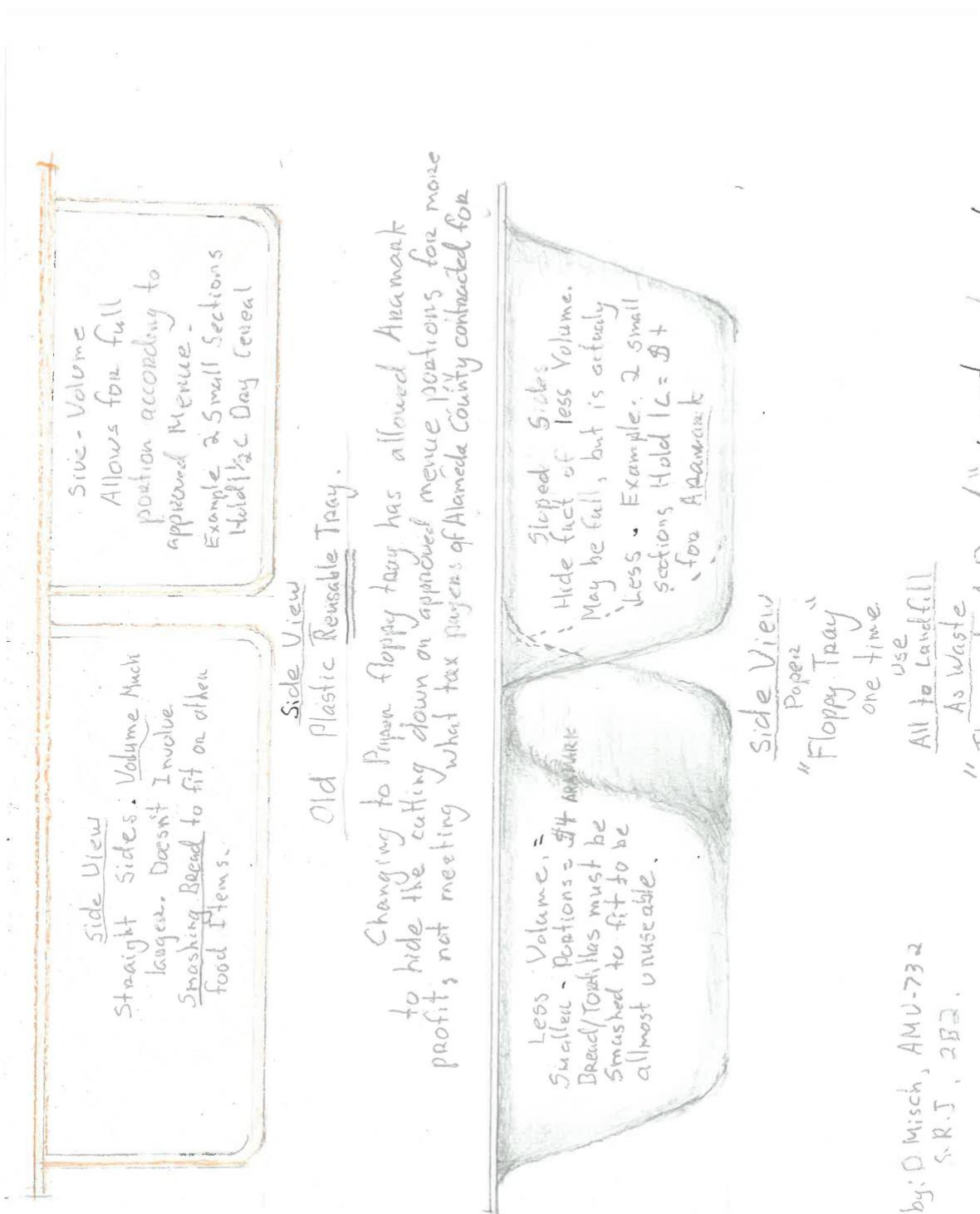
Date:

FLM Signature:

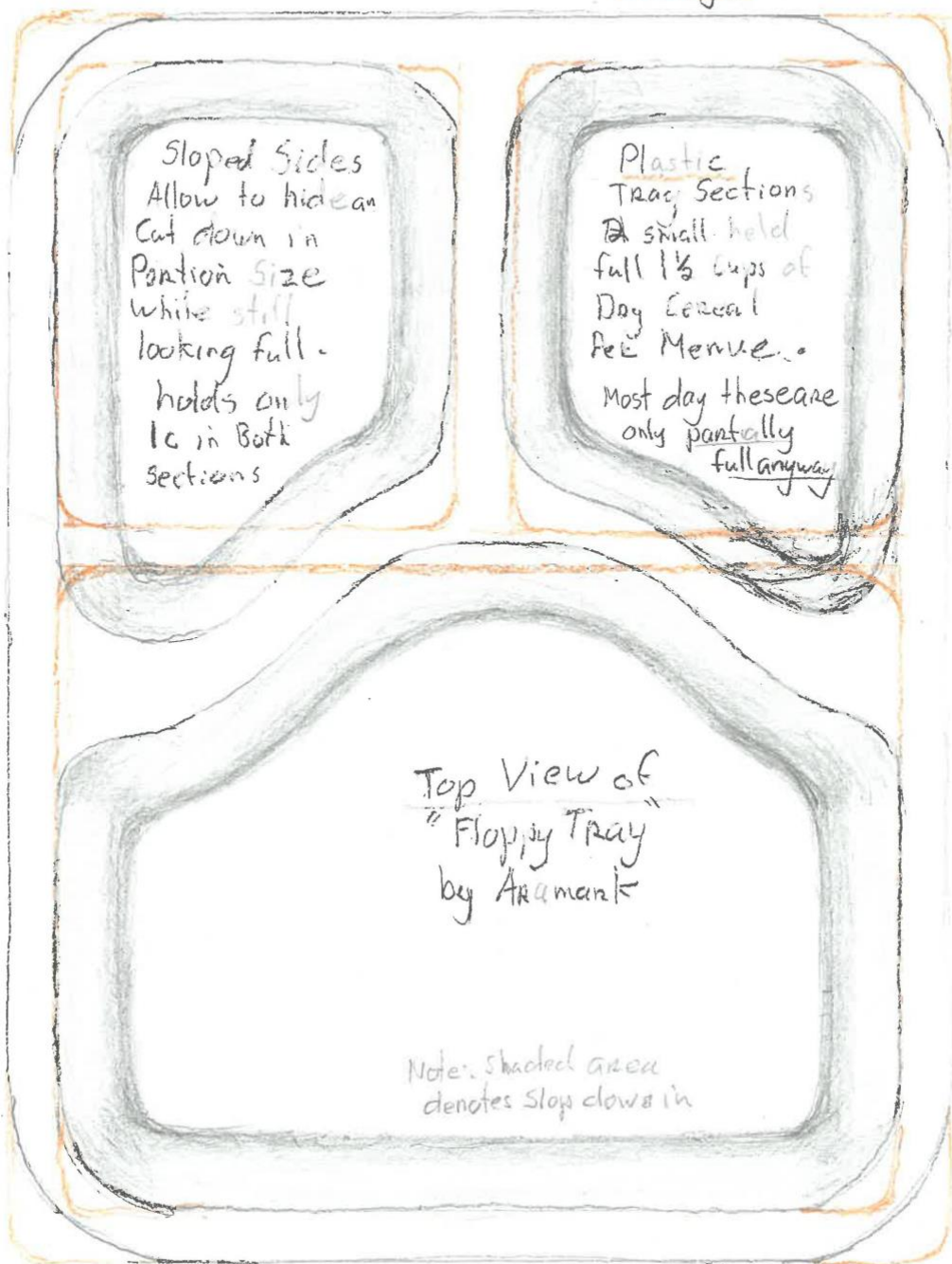
Date:

EXHIBIT B

SANTA RITA JAIL FOOD TRAYS



Top View of STD Reuseable
Plastic Tray - Overlayed
in Orange



Actual Size

By: D. Misch, AMU-732, S.R.J., 2B2